

Little Rock
Rogers
Austin
New York

MitchellWilliamsLaw.com

MITCHELL WILLIAMS

Mitchell, Williams, Selig, Gates & Woodyard, P.L.L.C.

e - b r i e f

5414 Pinnacle Point Dr., Ste. 500
Rogers, AR 72758-8131
479-454-5650

About Mitchell Williams

Providing strategic counsel on a variety of sophisticated legal matters for 55 years, the attorneys of Mitchell Williams bring together decades of diverse professional experience and extensive relationships to offer clients in Arkansas and across the United States the most comprehensive services and solutions possible.

As progressive leaders in the legal community, we work as advocates and partners to help companies meet the complex business needs required to succeed in today's challenging economic climate. The firm employs 76 attorneys from offices in Arkansas, Texas, and New York.

Learn more at :
MitchellWilliamsLaw.com

Author

JILL GRIMSLEY DREWYOR

COUNSEL

479-464-5655

JDREWYOR@MWLAW.COM



Changes in Perfection of Security Interests in Agricultural Collateral

Act 942, recently passed by the Arkansas legislature, will require a change in the filing of UCC-1 financing statements perfecting security interests in certain types of agricultural liens. The new law will take effect January 1, 2010.

Article 9 of the Uniform Commercial Code generally requires central filing of financing statements, except those that cover real estate related collateral, such as fixtures, timber and minerals. However, Arkansas originally adopted a non-uniform version of Section 9-501 that designated the office of the circuit clerk in the county in which the debtor is located as the filing location if the debtor is engaged in farming operations and the collateral is equipment used in farming operations, farm products, or accounts arising from the sale of farm products.

Arkansas recently enacted House Bill 1984, now known as Act 942, which amends Section 4-9-501 of

the Arkansas Uniform Commercial Code to change the filing location for collateral related to farming operations from the office of the circuit clerk to the central filing office maintained by the secretary of state. The new law takes effect on January 1, 2010. The only farming-related collateral that will continue to be filed with the circuit clerk is a farm-stored commodity financed by a loan through the Commodity Credit Corporation of the U.S. Department of Agriculture. However, even the farm-stored commodity local filing requirement only extends through December 31, 2012, after which date, central filing will also be required.

Until January 1, 2015, lien searches should be performed at both the county and central filing offices because liens recorded prior to January 1, 2010 will be recorded in the county offices and those liens are effective for five years. After January 1, 2015, a lien search in the central office for any collateral

consisting of equipment used in farming operations, farm products, or accounts arising from the sale of farm products will be sufficient. However, as a matter of course, it will still be desirable to perform a lien search in both locations in order to catch any liens property recorded at the county office, such as fixtures, timber and minerals.

Sections 1 and 2 of Act 942 are reprinted below, with additions in the law underlined and deletions from current law struck through.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 4-9-501 is amended to read as follows:

4-9-501. Filing office.

(a) Except as otherwise provided in subsection (b), if the local law of this state governs perfection of a security interest or agricultural lien, the office in which to file a financing statement to perfect the security interest or agricultural lien is:

- (1) the office designated for the filing or recording of a record of a mortgage on the related real property, if:
 - (A) the collateral is as-extracted collateral or timber to be cut; or
 - (B) the financing statement is filed as a fixture filing and the collateral is goods that are or are to become fixtures; or

(2) through midnight, December 31, 2012, the office of the circuit clerk in the county in which the debtor is located in this state if the debtor is engaged in farming operations and the collateral ~~is equipment used in farming operations, or farm products, or accounts arising from the sale of farm products~~ a farm-stored commodity financed by a loan through the Commodity Credit Corporation of the United States Department of Agriculture; or

(3) the office of the Secretary of State, in all other cases, including a case in which the collateral is goods that are or are to become fixtures and the financing statement is not filed as a fixture filing.

(b) The office in which to file a financing statement to perfect a security interest in collateral, including fixtures, of a transmitting utility is the office of the Secretary of State. The financing statement also constitutes a fixture filing as to the collateral indicated in the financing statement which is or is to become fixtures.

SECTION 2. Arkansas Code § 4-9-510 is amended to read as follows:

4-9-510. Effectiveness of filed record.

(a) A filed record is effective only to the extent that it was filed by a person that may file it under § 4-9-509.

(b) A record authorized by one (1) secured party of record does not affect the financing statement with respect to another secured party of record.

(c) A continuation statement that is not filed within the six-month period prescribed by § 4-9-515(d) is ineffective.

(d) (1) Except as provided in subdivision (d)(2) of this section, if a debtor is engaged in farming operations and the collateral described in a financing statement is an agricultural lien or a security interest in equipment used in farming operations, farm products, or accounts arising from the sale of farm products, a filing with the circuit clerk of the county where a debtor is engaged in farming operations of a financing statement, a termination statement, or a continuation statement to extend the effectiveness of a financing statement is ineffective.

(2) If a debtor is engaged in farming operations and the collateral described in a financing statement is a farm-stored commodity financed by a loan through the Commodity Credit Corporation of the United States Department of Agriculture, a filing after midnight, December 31, 2012, with the circuit clerk of the county where a debtor is engaged in farming operations of the financing statement, a termination statement, or a continuation statement to extend the effectiveness of the financing statement is ineffective.

(3) The effectiveness of a financing statement that perfects an agricultural lien or a security interest in equipment used in farming operations, farm products, or accounts arising from the sale of farm products may be continued by filing a continuation statement with the Secretary of State before the financing statement expires.